

14. Prevented Planting

Your prevented planting coverage will be 45 percent of your production guarantee for timely planted acreage. Additional prevented planting coverage levels are not available for onions.

[62 FR 28613, May 27, 1997, as amended at 62 FR 65173, Dec. 10, 1997; 64 FR 33385, June 23, 1999; 75 FR 15887, Mar. 30, 2010]

§ 457.136 Tobacco crop insurance provisions.

The Tobacco Crop Insurance Provisions for the 2010 and succeeding crop years are as follows:

FCIC policies:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Tobacco Crop Insurance Provisions

1. Definitions.

Average value. For appraised production, the value of such production divided by the appraised pounds for the tobacco types. For harvested production, the value of such production divided by the harvested pounds for the tobacco type.

Basic unit. In lieu of the definition in the Basic Provisions, a basic unit is all insurable acreage of an insurable type of tobacco in the county in which you have a share on the date of planting for the crop year and that is identified by a single FSA farm serial number at the time insurance first attaches under these provisions for the crop year.

Harvest. Cutting or priming and removing all insured tobacco from the unit.

Hydroponic plants. Seedlings grown in liquid nutrient solutions.

Late planting period. In lieu of the definition in section 1 of the Basic Provisions, the period that begins the day after the final planting date for the insured crop and ends 15 days after the final planting date, unless otherwise specified in the Special Provisions.

Planted acreage. In addition to the definition contained in the Basic provisions, land in which tobacco seedlings, including hydroponic plants, have been transplanted by hand or machine from the tobacco bed to the field.

Pound. Sixteen ounces avoirdupois.

Priming. A method of harvesting tobacco by which one or more leaves are removed from the stalk as they mature.

Tobacco bed. An area protected from adverse weather in which tobacco seeds are sown and seedlings are grown until transplanted into the tobacco field by hand or machine.

Tobacco types. Insurable tobacco as shown on the Special Provisions of Insurance.

2. Unit Division.

A basic unit will be determined in accordance with the definition of basic unit contained in section 1 of these Crop Provisions. Optional and enterprise units may be allowed by the Special Provisions of Insurance.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

In addition to the requirements of section 3 of the Basic Provisions, you must select only one price election percentage and coverage level for each tobacco type designated in the Special Provisions of Insurance that you elect to insure.

4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are March 15.

6. Report of Acreage.

In addition to the requirements of section 6 of the Basic Provisions, you must provide a copy of any written lease agreement, if applicable, between you and any landlord or tenant. The written lease agreement must:

- (1) Identify all other persons sharing in the crop; and
- (2) Be submitted to us on or before the acreage reporting date.

7. Insured Crop.

(a) In accordance with section 8 of the Basic Provisions, the insured crop will be each tobacco type you elect to insure and for which a premium rate is provided by the actuarial documents:

- (1) In which you have a share;
- (2) That meets all rotation requirements on the Special Provisions of Insurance.

(b) You will be considered to have a share in the insured crop if you retain control of the acreage on which the tobacco is grown and you are at risk of loss.

8. Insurable Acreage.

In addition to the provisions of section 9 of the Basic Provisions, we will not insure any acreage that is:

- (a) Planted in any manner other than as provided in the definition of "planted acreage" in section 1 of these Crop Provisions, unless otherwise provided by the Special Provisions of Insurance or by written agreement; or

(b) Damaged before the final planting date to the extent that the majority of producers in the area would normally not further care for the tobacco crop, unless such crop is replanted or we agree that replanting is not practical.

9. Insurance Period.

In lieu of the provisions of section 11 of the Basic Provisions, coverage ends at the earlier of:

- (a) Total destruction of the tobacco on the unit;
- (b) Removal of the tobacco from the unit where grown, except for curing, grading, and packing;
- (c) Abandonment of the crop on the unit;
- (d) Final adjustment of the loss on the unit; or
- (e) The calendar date for the end of the insurance period, which is the date immediately following planting and designated by tobacco types and states (or as otherwise stated on the Special Provisions of Insurance) as follows:
 - (i) Flue cured—November 30 in North Carolina and Virginia;
 - (ii) Flue cured—October 31 in Alabama, Florida, Georgia, and South Carolina;
 - (iii) Burley—February 28 in all states;
 - (iv) Dark air cured—March 15 in Kentucky, Tennessee, and Virginia;
 - (v) Fire cured—April 15 in Kentucky, Tennessee, and Virginia;
 - (vi) Cigar Binder, Cigar Filler, and Cigar Wrapper—April 30 in Connecticut, Massachusetts, Pennsylvania, and Wisconsin; and
 - (vii) Maryland type—May 15 in Maryland and Pennsylvania.

10. Causes of Loss.

In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during the insurance period:

- (a) Adverse weather conditions;
- (b) Fire;
- (c) Insects, but not damage due to insufficient or improper application of pest control measures;
- (d) Plant disease, but not damage due to insufficient or improper application of disease control measures;
- (e) Wildlife;
- (f) Earthquake;
- (g) Volcanic eruption; or
- (h) Failure of the irrigation water supply due to a cause of loss specified in sections 10(a) through (g) that also occurs during the insurance period.

11. Duties In The Event of Damage or Loss.

(a) In accordance with section 14 of the Basic Provisions, you must maintain representative samples of each unharvested tobacco crop (type) for our inspection. The rep-

resentative samples must be at least 5 feet wide (at least two rows), and extend the entire length of each field in the unit. The samples must not be harvested or destroyed until after our inspection.

(b) If you have filed a notice of damage, you must leave all tobacco stalks and stubble in the unit intact for our inspection. The stalks and stubble must not be destroyed until we give you written consent to do so or until 30 days after the end of the insurance period, whichever is earlier.

12. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

- (1) For any optional unit, we will combine all optional units for which such production records were not provided; or
 - (2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.
- (b) In the event of loss or damage covered by this policy, we will settle your claim by:
- (1) Multiplying the number of insured acres by your applicable production guarantee (per acre);
 - (2) Multiplying the result of section 12(b)(1) by your price election;
 - (3) Multiplying the total production to count determined in section 12(c) by your price election;
 - (4) Subtracting the result of section 12(b)(3) from the result of section 12(b)(2); and
 - (5) Multiplying the result of section 12(b)(4) by your share.

For example:

You have 100 percent share in a unit to produce 3,000 pounds of Burley tobacco, a production guarantee of 1,950 pounds (APH yield of 3,000 pounds \times .65 coverage level), you plant 1.0 acre, your price election is \$1.50 per pound, and your production to count is 500 pounds. Your indemnity would be calculated as follows:

- (1) 1.0 acre \times 1,950 pounds production guarantee = 1,950 pounds;
- (2) 1,950 pounds \times \$1.50 price election = \$2,925.00 value of the production guarantee;
- (3) 500 pounds production to count \times \$1.50 price election = \$750.00 value of the production to count;
- (4) \$2,925.00 value of the production guarantee—\$750.00 value of the production to count = \$2,175.00; and
- (5) \$2,175.00 \times 1.000 share = \$2,175.00 indemnity.

(c) The total production to count (in pounds) from all insurable acreage on the unit will include:

- (1) All appraised production as follows:
 - (i) Not less than the production guarantee for acreage:
 - (A) That is abandoned;

(B) Put to another use without our consent;

(C) That is damaged solely by uninsured causes;

(D) For which you fail to provide records of production, that are acceptable to us; or

(E) For any type of tobacco when the stalks and stubble have been destroyed without our consent under section 11(b);

(ii) Production lost due to uninsured causes.

(iii) Potential production on insured acreage you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count.); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from insurable acreage.

(d) Once we agree the current year's tobacco has no average value due to an insured cause of loss, you must destroy it, and it will not be considered production to count. If you refuse to destroy such tobacco, we will include it as production to count and value it at the applicable price election.

(e) In lieu of section 15(b) of the Basic Provisions, if we have conducted an appraisal of your insured crop and we determine that the harvested production you report is inconsistent with the appraised production and you cannot prove that an insurable cause of loss occurred between the appraisal and the end of the insurance period that can account for the reduction in production, your claim will be settled based on the appraised production on insured acreage, even if you have harvested the acreage. If we settle your claim based on your appraised production, section 12(f) regarding quality adjustment is not applicable.

(f) Mature tobacco may be adjusted for quality deficiencies when production has been damaged by insurable causes.

(1) You must contact us before any tobacco is disposed of so we can inspect the tobacco to determine the extent of the damage.

(2) Our inspection will be used to determine whether the average value is reasonable. Based on amount of damage determined during the inspection, if the average value is:

(i) Reasonable, such average value will be used to determine the quality adjustment in section 12(f)(5);

(ii) Unreasonable, we may adjust the average value used to calculate the quality adjustment in section 12(f)(5).

(3) If you dispose of any production without giving us the opportunity to have the tobacco inspected, you will not receive a quality adjustment for such tobacco, regardless of the average value of the production.

(4) Production to count will only be reduced if the average value for damaged tobacco is less than 75 percent of your tobacco price election. You must provide us with records that are acceptable to us which clearly shows the number of pounds, price per pound, and the quality of such tobacco.

(5) Any reduction in the production to count will be determined by:

(i) Dividing the average value per pound as determined by us in accordance with section 12(f)(2) of these Crop Provisions by your applicable price election; and

(ii) Multiplying this result by the number of pounds of damaged production.

13. Late Planting

In lieu of late planting provisions in the Basic Provisions regarding acreage initially planted after the final planting date, insurance will be provided for acreage planted to the insured crop after the final planting date as follows:

(a) The production guarantee (per acre) for acreage planted during the late planting period will be reduced by:

(1) One percent per day for the 1st through the 10th day; and

(2) Two percent per day for the 11th through the 15th day;

(b) The premium amount for insurable acreage planted to the insured crop after the final planting date will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for acreage planted after the final planting date exceeds the liability on such acreage, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid for such acreage).

14. Prevented Planting

Your prevented planting coverage will be 35 percent of your production guarantee for

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timely planted acreage. Additional prevented planting coverage levels are not available for tobacco.

[74 FR 13059, Mar. 26, 2009]

§ 457.137 Green pea crop insurance provisions.

The Green Pea Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC Policies

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured Policies

(Appropriate title for insurance provider)

Both FCIC and reinsured policies

Green Pea Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Base contract price. The price stipulated in the processor contract for the tenderometer reading, grade factor, or sieve size that is designated in the Special Provisions, if applicable, without regard to discounts or incentives that may apply.

Bypassed acreage. Land on which production is ready for harvest but the processor elects not to accept such production so it is not harvested.

Combining (vining). Separating pods from the vines and, in the case of shell peas, separating the peas from the pod for delivery to the processor.

Dry peas. Green peas that have matured to the dry form for use as food, feed, or seed.

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those required by the green pea processor contract with the processing company, and recognized by the National Institute of Food and Agriculture as compatible with agronomic and weather conditions in the county.

Green peas. Shell type and pod type peas that are grown under a processor contract to be canned or frozen and sold for human consumption.

Harvest. Combining (vining) of the peas.

Nurse crop (companion crop). A crop planted into the same acreage as another crop, that is intended to be harvested separately, and

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which is planted to improve growing conditions for the crop with which it is grown.

Peas. Green or dry peas.

Planted acreage. In addition to the definition contained in the Basic Provisions, peas must initially be placed in rows to be considered planted. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Pod type. Green peas genetically developed to be eaten without shelling (e.g., snap peas, snow peas, and Chinese peas).

Practical to replant. In lieu of the definition of “practical to replant” contained in section 1 of the Basic Provisions, practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors including, but not limited to, moisture availability, condition of the field, time to crop maturity, and marketing window, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant unless the replanted acreage can produce at least 75 percent of the approved yield, and the processor agrees in writing that it will accept the production from the replanted acreage.

Price election. In lieu of the definition of “Price election” contained in section 1 of the Basic Provisions, price election is defined as the price per pound stated in the processor contract (contracted price) for the tenderometer reading, grade factor, or sieve size contained in the Special Provisions.

Processor. Any business enterprise regularly engaged in canning or freezing green peas for human consumption, that possesses all licenses and permits for processing green peas required by the state in which it operates, and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process contracted green peas within a reasonable amount of time after harvest.

Processor contract. A written agreement between the producer and a processor, containing at a minimum:

(a) The producer’s commitment to plant and grow green peas, and to deliver the green pea production to the processor;

(b) The processor’s commitment to purchase all the production stated in the processor contract; and

(c) A base contract price.

Multiple contracts with the same processor that specify amounts of production will be considered as a single processor contract unless the contracts are for different types of green peas.

Production guarantee (per acre). The number of pounds determined by multiplying the approved actual production history yield per acre by the coverage level percentage you